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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,821	07/10/2000	Paul C. Zimmer	ZMM-101	9025

7590 11/19/2004  
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EXAMINER

TORRES, MELANIE

ART UNIT PAPER NUMBER

3683

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/612,821  
Filing Date: July 10, 2000  
Appellant(s): ZIMMER, PAUL C.

**MAILED**

NOV 19 2004

**GROUP 3600**

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John R. Benefiel  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 20, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Invention**

The summary of invention contained in the brief is correct.

**(6) Issues**

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-5 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hallam.

Re claims 1-5, Hallim teaches a promotional calendar comprising a series of pages each imprinted with a respective day of the year and held together to allow turning or tear off of each page, each page printed and distributed.

However, Hallim does not teach wherein each page is prominently printed with the name of a person to personalize the calendar and an enterprise identifier. However, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited. The printing and distributing steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have printed the name of a person on each page to personalize the calendar since it has been held that printed matter that is not functionally related to the substrate does not distinguish the invention from the prior art in terms of patentability.

**(11) Response to Argument**

Applicant asserts that *In re Gulack* and *In re Lowry* are not applicable to the instant rejection. However, the examiner maintains that the limitations directed toward the printed indicia are nonfunctional descriptive material and are not pertinent to the method of promoting an enterprise. Hallam teaches "a collection of advertising sheets 1 which may be bound together in a book 2 for convenient delivery to the user." (column 1, lines 19-21)

For the above reasons, it is believed that the rejections should be sustained.

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Art Unit: 3683

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Respectfully submitted,

MT  
November 2, 2004

Conferees

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